IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.999 OF 2004

Shri Maruti Appa Khomne
since deceased through his L/rs. ..Appellants

versus

Dr.Ramesh Mangaldas Patel and Ors. ..Respondents

Shri Nitin P.Deshpande for appellants

Shri T.D.Deshmukh for respondents

CORAM : P.V.KAKADE,J.

DATE : 6TH OCTOBER, 2004

P.C.:

1. Heard both sides.

2. Rule. Rule made returnable forthwith.

3. This is an appeal preferred against the judgment and

order passed by the Civil Judge, Senior Division, Pune on 5.4.2994 in Special Civil Suit No.2072 of 1995 holding that the suit deserves to be decreed and plaintiffs were entitled to decree for specific performance of contract in respect of Northern portion of Agriculture land admeasuring 0.80 R out of Survey No.26/2 situated at village Narhe within PCMC Limit, Dist.Pune i.e. suit property, after depositing the balance consideration amount within one month from the date of the order. The defendants were directed to comply with the pre-requisit terms and conditions of the agreement dated 6.5.1993 for executing final conveyance of sale deed in respect of the suit property.

4. It was held by the learned trial judge that the plaintiffs had proved that they were ready and willing to perform their part of the contract dated 6.5.1993 and defendants failed to perform their part of contract. It was the defence of the appellant-defendant that the suit transaction was a loan transaction and therefore suit for specific performance was not maintainable in law.

5. I heard Mr. Deshpande, the learned counsel for the appellant, who vehemently urged that evidence on record

sufficiently shows that the suit transaction was a loan transaction and therefore lower court erred in decreeing the suit for specific performance holding that the plaintiffs were always ready and willing to perform their part of contract. In support of this contention my attention was brought to a letter of the plaintiffs dated 4.12.1993 in order to show that it was a loan transaction. However, if we perused the document of letter, of which copy was provided to me for ready reference, it is clear that it works against the appellant himself. It was written by the plaintiff, addressed to defendant, stating that he had entered into contract with them on conditions agreed between the parties, however, he found that the said condition was false and therefore he was not interested in the land. The defendant did not approach inspite of repeated letter and therefore, he demanded his refund of earnest amount. Mr.Deshmukh stated that such sentence of letter demanding back the earnest amount would show that the transaction was that of loan. I prefer to disagree with this proposition. In fact the plaintiff sent a letter himself shows that there was a valid contract between the parties but it was defendant who had committed breach of agreement and hence plaintiff was demanding

refund of earnest money at the foot of transaction. This aspect shows that plaintiff was always ready and willing to perform his contract and it was defendant who had defaulted that.

6. Mr. Deshmukh further urged that this document of letter is forged document in the sense that signature thereof is not of plaintiff and therefore, the learned trial judge should have sent it to hand-writing expert instead of comparing the signature of this letter with the admitted signature of plaintiff and is not come to the conclusion that it was a genuine signature. In my considered view, the question of signature is irrelevant, the impugned letter has come from the custody of the appellant and contents thereof are relied upon by the appellant in order to support his claim that the suit transaction is a loan transaction. As we seen earlier the contents of earlier are quite opposite and support the plaintiffs case and therefore, the question of genuineness of the signature of the plaintiff becomes academic and did not be addressed true at all. In the result I found no merit in the appeal and it deserves to be dismissed in limine.

7. Hence the appeal stands dismissed in limine with no order as to costs.